



What's New in HR Law

They posted what!? Why every employer should have a social media policy

February 14, 2020

Bottom Line

Social media policies can serve several important purposes for employees and employers. For employees, a policy can set out clear “do’s” and “don’ts”. For employers, a policy can be relied on when disciplining or terminating someone’s employment for inappropriate conduct on social media.

Social Media Posts

The majority of Canadians now participate in some form of social media. Whether it is Facebook, Instagram, Twitter, YouTube, or just a good old fashioned blog, social media allows people to share content instantly on a global scale. While the exchange of information and connectivity that social media provides has many benefits, it also has its downsides. Many of these downsides have been highlighted in news stories, labour arbitrations, and court cases.

This update is for general discussion purposes and does not constitute legal advice or an opinion.

Filion Wakely Thorup Angeletti LLP www.filion.on.ca

Toronto

Bay Adelaide Centre
333 Bay Street, Suite 2500, PO Box 44
Toronto, Ontario M5H 2R2
tel 416.408.3221 | fax 416.408.4814
toronto@filion.on.ca

London

620A Richmond Street, 2nd Floor
London, Ontario N6A 5J9
tel 519.433.7270 | fax 519.433.4453
london@filion.on.ca

Hamilton

1 King Street West, Suite 1201, Box 57030
Hamilton, Ontario L8P 4W9
tel 905.526.8904 | fax 905.577.0805
hamilton@filion.on.ca

For instance, take the 2016 example of an employee who worked at a retail store that focused on plus-size women's clothing who described her job on social media as "Conquering the world, one well-dressed fat lady at a time." After discovering the comments, the employer terminated the person's employment. Media headlines levied criticism at the employer, claiming the employee was fired simply for using the word "fat". These public critiques missed what was presumably the employer's concern: that the employee's post undermined the company's mission to support and foster a culture of body positivity.

This example highlights two different ways in which a social media policy is beneficial – for both employers and employees. For the employee, a social media policy can clearly set out the employer's expectations with respect to social media. For instance, a policy can outline that employees are not permitted to publish posts which name or relate to the employer without the employer's prior authorization. While it is not possible to list everything an employee should and should not say on social media, having a comprehensive policy in place encourages employees to think critically about content *before* they hit "post".

For the employer, a social media policy provides the context in which employees' social media activity can be assessed and evaluated, as well as a basis upon which to take disciplinary action in the event an employee's post runs afoul of clearly communicated expectations. An appropriately worded policy will allow the employer to advance the position that an employee is disciplined for breach of the policy, not exclusively for the content of their social media post.

Pictures and Videos

Social media policies should also make it clear when (if ever) photography/videography is permitted in the workplace. Although it is common for people of all ages to engage in taking "selfies" in all manner of locations, or even to take and share a photo of something as mundane as their morning coffee, the practice of sharing or posting photos taken inside the workplace can have serious consequences.

For instance, an employee may be so preoccupied taking a picture of the coffee cup on which a barista misspelled their name that they do not notice the cup is sitting on a pile of highly confidential documents.

While a social media policy can help avoid mistakes like the one referenced above, it could also help avoid more blameworthy activity. For example, some may remember a news story that made headlines in 2013 with respect to a fast-food restaurant employee who was fired after a picture of them licking their employer's food product went viral. Others may recall hearing about various other incidents in the media, including taking and posting inappropriate photos using company property as a prop or while wearing company clothing.

These, and other unfortunate examples, underscore the importance of *not* relying exclusively on the notion of "common sense". Rather, if you want to prohibit certain actions, put it in writing. This does not mean an employer must guess at and write down every potential indiscretion. However, broad (but well drafted) language can generally address the majority of potential

issues. For instance, a policy can reference and prohibit the sharing of photographs (or other media) of behaviour that may reasonably result in damage to an employer's reputation.

Creating a policy that works

Depending on the type of workplace and specific categories of workers to whom a policy will apply, different standards and expectations may be appropriate. For instance, some employers readily embrace and encourage employees to be active and avid social media users. Similarly, for some employees, social media use is a central component of their job description and assigned duties and responsibilities.

Different workplaces will have differing levels of tolerance for social media use, and will require different sets of standards and rules to help guide that use both in and outside of working hours. Regardless, all employers are well-advised to develop a social media policy that is specifically tailored to their workplace and that clearly delineates what is and is not acceptable conduct.

Check the Box

- Ensure your workplace has a social media policy
- Make employees aware of the policy, the importance of compliance, and the consequences of non-compliance
- Enforce the policy in a reliable and consistent manner
- Like all workplace policies, a social media policy should be reviewed on a regular basis to ensure that it meets the employer's goals and, if necessary, addresses any new social media trends

Need more information?

If you need more information about effective social media policies, assistance with updating existing policies, or advice on how to deal with an employee who has posted problematic content on social media, contact [Darren Avery](#) or your regular lawyer with the firm.



management labour and employment law



Toronto

Bay Adelaide Centre
333 Bay Street, Suite 2500,
PO Box 44
Toronto, Ontario M5H 2R2
tel: 416.408.3221
fax: 416.408.4814
toronto@filion.on.ca

London

620A Richmond Street, 2nd Floor
London, Ontario N6A 5J9
tel: 519.433.7270
fax: 519.433.4453
london@filion.on.ca

Hamilton

1 King Street West, Suite 1201
Box 57030
Hamilton, Ontario L8P 4W9
tel: 905.526.8904
fax: 905.577.0805
hamilton@filion.on.ca

This update is for general discussion purposes and does not constitute legal advice or an opinion.